STATE OF MICHIGAN

COURT OF APPEALS

JAMES VOLTZ,

Plaintiff-Appellee,

v

SHERRY L. VOLTZ, a/k/a SHERRY L. WRIGHT,

Defendant-Appellant.

UNPUBLISHED
January 21, 2010

No. 291573
Saginaw Circuit Court
LC No. 06-063082-DO

Before: K. F. Kelly, P.J., and Hoekstra and Whitbeck, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment of divorce entered after binding arbitration pursuant to the domestic relations arbitration act, MCL 600.5070 et seq. We affirm.[1]

On appeal, defendant argues that the arbitrator exceeded his authority by making an award that "was contrary to the controlling laws of equity" applicable to the division of property. Preliminarily, we note that defendant has not preserved this issue for review. MCL 600.5081 provides that a motion to vacate or modify an arbitration award under the DRAA should be made in circuit court within 21 days of the issuance of the award. MCL 600.5082 provides: "An appeal from an arbitration award under this chapter that the circuit court confirms, vacates, modifies, or corrects shall be taken in the same manner as from an order or judgment in other civil actions." Defendant never moved to vacate or modify the arbitration award and because defendant did not follow the statutory procedure for challenging an arbitration award, the issue is unpreserved and we need not consider it. *Michigan Education Ass'n v Secretary of State*, 280 Mich App 477, 487-488; 761 NW2d 234 (2008).

Nonetheless, even if plaintiff had properly preserved the issue, plaintiff's claim would fail. Our review of a trial court's ruling on a motion to vacate or modify is de novo. *Washington v Washington*, 283 Mich App 667, 671; 770 NW2d 908 (2009). However, with regard to the arbitrator's ruling, we also review it de novo, but we:

[1] This appeal has been decided without oral argument pursuant to MCR 7.214(E).

> may not review the arbitrator's findings of fact, *DAIIE v Gavin*, 416 Mich 407, 429; 331 NW2d 418 (1982); [*Krist v Krist*, 246 Mich App 59, 67; 631 NW2d 53 (2001)], and any error of law must be discernible on the face of the award itself, *Gavin*, *supra* at 428-429. By "on its face" we mean that only a legal error "that is evident without scrutiny of intermediate mental indicia," *id*. at 429, will suffice to overturn an arbitration award. Courts will not engage in a review of an "arbitrator's 'mental path leading to [the] award.'" *Krist*, *supra* at 67, quoting *Gavin*, *supra* at 429. Finally, in order to vacate an arbitration award, any error of law must be "so substantial that, but for the error, the award would have been substantially different." [*Washington*, *supra* at 672-673 (some citations omitted).]

Thus, we must look at the arbitrator's application of equitable principles in determining whether an arbitrator exceeded his authority with regard to the division of property. *Id.* at 673.

After our review of the arbitrator's award, we cannot conclude that there was an error of law "so substantial that, but for the error, the award would have been substantially different." *Id*. Defendant complains that plaintiff should have been required to pay for her health insurance or, alternatively, provide her spousal support to enable her to do so. But we fail to see how the arbitrator's award requiring defendant to pay for COBRA benefits was inequitable. The arbitrator found that defendant had $60,000 in gross receipts from her beauty salon and gambling debt of $23,500, and that plaintiff received approximately $25,000 a year from his pension and social security payments. Requiring defendant to pay for COBRA benefits was not inequitable under these circumstances.

Defendant also asserts that she should have received compensation for two years' payments that she made toward a 2004 Cadillac SRX and equitable distribution of a Corvette, both cars having been acquired during the marriage, despite the fact that she was awarded a Cadillac Coupe Deville also acquired during the marriage. The arbitrator, however, found that plaintiff had made the subject payments on the SRX vehicle. In addition, the arbitrator found that the debt on all the cars had been paid off and transferred to a mortgage for which plaintiff was responsible. That plaintiff had assumed the debt for these three vehicles was a valid reason for awarding two of the vehicles to him. "[A]n equitable distribution need not be an equal distribution, as long as there is an adequate explanation for the chosen distribution." *Washington*, *supra* at 673.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Joel P. Hoekstra
/s/ William C. Whitbeck